

# Tributes

## In Remembrance of Judges Frank M. Johnson, Jr. and John Minor Wisdom

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Judges Frank M. Johnson, Jr. and John Minor Wisdom, senior judges on the United States Courts of Appeals for the Eleventh and Fifth Circuits, respectively, were great judges. This adjective can be used without qualification not just because of the superb intellectual energy and high professional standards that each brought to the bench. These two extraordinarily gifted men also met the very special—indeed, burdensome without parallel—tasks the Supreme Court thrust upon them and their colleagues, especially those sitting in the old Fifth Circuit (now the Eleventh and Fifth), as well as others in the Fourth, Sixth, and Eighth Circuits and throughout the federal court system. The Supreme Court's mandate to the inferior courts was contained—obscurely, indirectly, and without any specific guidelines or instructions—in the final paragraph of the second *Brown* opinion, ordering a remand.<sup>1</sup> I say this without hesitation because even though that paragraph could be taken, and might possibly have been intended to be taken, as referring only to the four cases before the Court, I have always interpreted it to reflect the Court's vision of the future. That final paragraph articulates the duty of the inferior courts to exercise their judicial discretion and to bring their experience to bear not just on segregated school systems, but also on other state-controlled institutions that perpetuated the monstrous subjugation of black people.

In very brief summary, the Court was telling the inferior courts that, as the most direct and immediate source of pertinent federal power in the

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1. *Brown v. Board of Educ. (Brown II)*, 349 U.S. 294 (1955).

matter, they had to change the society in which they functioned from one in which structure and politics depended on the systematic subjugation of African Americans, to one in which there was equality, or at least the opportunity for equality, regardless of race, in all institutions and aspects of society controlled by the state. (This burden was expanded, of course, by the 1964 Civil Rights Act, especially Title VII.) The impact of the Court's mandate on individual judges, personally identifiable, whose friends and families were in the groups most benefited by the system of subjugation, is best understood or imagined by white Southerners living in the late 1950s and early 1960s. Based on my own experience with federal judges (as well as with many lawyers) in the South toward the end of the first part of the 1960s, I suspect that the judges, with the terrible but unavoidable power flowing to them from the cases brought before them, could be separated into three groups.

The first and perhaps largest group followed the most narrow version of the message of *Brown* and applied wherever possible—and certainly in all school cases—the famous interpretation of *Brown* by Judge Parker in *Briggs v. Elliot*:

[I]t is important that we point out exactly what the Supreme Court has decided and what it has not decided in [*Brown*]. It has not decided that the federal courts are to take over or regulate the public schools of the states. It has not decided that the states must mix persons of different races in the schools or must require them to attend schools or must deprive them of the right of choosing the schools they attend. What it has decided, and all that it has decided, is that a state may not deny to any person on account of race the right to attend any school that it maintains. This, under the decision of the Supreme Court, the state may not do directly or indirectly; but if the schools which it maintains are open to children of all races, no violation of the Constitution is involved even though the children of different races voluntarily attend different schools, as they attend different churches. Nothing in the Constitution or in the decision of the Supreme Court takes away from the people freedom to choose the schools they attend. The Constitution, in other words, does not require integration. It merely forbids discrimination. It does not forbid such segregation as occurs as the result of voluntary action. It merely forbids the use of governmental power to enforce segregation. The Fourteenth Amendment is a limitation upon the exercise of power by the state or state agencies, not a limitation upon the freedom of individuals.<sup>2</sup>

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2. 132 F. Supp. 776, 777 (E.D.S.C. 1955).

The judges taking this course in the 1960s were, of course, under considerable pressure, both professional and personal, to avoid breaking new ground or moving in a way that could not be described as obligated by their judicial duties. They and their families were, after all, subjected to many threats—and sometimes acts—of violence. And they were, in the 1960s at least, always aware of the publicly condoned conduct of a second group of sitting judges who openly refused to follow *Brown* even in the most flagrant situations, such as the entry of James Meredith into the University of Mississippi in 1962.<sup>3</sup>

Judges Johnson and Wisdom were of a different breed from either of these two groups, and it is in that difference that their greatness lay. That difference earned them their ultimate fame and the official recognition of extraordinary achievement and merit from their government and from many university and professional groups.<sup>4</sup> Perhaps because of the inescapable connection between excellence in the judicial act and the substance of judicial actions, it is difficult to define precisely why judicial greatness arose in the wake of *Brown*, and not as a consequence of lower courts' reactions to other controversial decisions. I believe that the heart of the matter, unexpressed with specificity at the time, was that these two inspired judges and a very few of their colleagues<sup>5</sup> understood and shared a hidden vision of the true message of *Brown*: that in the flow of American history it was time to end forever the systematic subjugation of black Americans; that this need for change created a necessary, dangerous, and unavoidable

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3. See *Meredith v. Fair*, 202 F. Supp. 224 (S.D. Miss. 1962).

4. Judge Johnson received honorary degrees or awards from Notre Dame, Princeton, St. Michael's College, the University of Alabama, Mississippi State University, Boston University, Yale, Tuskegee Institute, and New York University. See FRANK SIKORA, *THE JUDGE: THE LIFE & OPINIONS OF ALABAMA'S FRANK M. JOHNSON, JR.* 316 (1992). He received an honorary degree from the Yale Law School in 1980. See JACK BASS, *TAMING THE STORM: THE LIFE AND TIMES OF JUDGE FRANK M. JOHNSON, JR. AND THE SOUTH'S FIGHT OVER CIVIL RIGHTS* 403 (1993) [hereinafter BASS, *TAMING THE STORM*]. Judge Johnson was offered so many honorary degrees that he eventually stopped accepting them. See *id.* In 1984, Judge Johnson received the Edward J. Devitt Distinguished Service to Justice Award, the most prestigious recognition given a federal judge. See *id.* at 405. Accolades came even from the State of Alabama: In 1979, Judge Johnson was inducted into the Alabama Academy of Honor, which the Alabama Legislature had created in 1965 to honor up to 100 Alabamians whose contributions "had brought credit to the state." *Id.* at 401. In 1992, the federal courthouse in Montgomery was named for Judge Johnson. See *id.* at 470.

Judge Wisdom received the Devitt Distinguished Service to Justice Award in 1989, jointly with Judge Elbert Tuttle. See JACK BASS, *UNLIKELY HEROES* 331 (1990) [hereinafter BASS, *UNLIKELY HEROES*]. In 1993, he was awarded the Presidential Medal of Freedom by President Clinton. In 1994, the Court of Appeals building in New Orleans was renamed after Judge Wisdom. See Joel Wm. Friedman, *John Minor Wisdom: The Noblest Tulanian of Them All*, 74 TUL. L. REV. 1, 37 (1999).

5. Several Southern judges took the lead in implementing *Brown* and its progeny, in the face of great Southern resistance. Justice Brennan once said, "They were a great group of judges down there, John Wisdom, Judge Tuttle, Rives, that whole group. They changed the face of the nation." BASS, *TAMING THE STORM*, *supra* note 4, at 467. To this list would be added Judge John R. Brown, Judge Frank Johnson, and Judge J. Skelly Wright. See generally BASS, *UNLIKELY HEROES*, *supra* note 4.

conflict with many states in the full detail of the exercise of their power of governance; and that the federal courts, judge by judge, were an integral part of the federal power. Having seen that, these judges did not try to avoid, but accepted willingly, the conflicts that followed and the accompanying necessity to recognize and protect the liberties and rights of the subjugated black Americans of the area.

Happily, it would be impossible to document the summary of post-*Brown* litigation described above through categorization of judicial behaviors without a thorough review of judicial decisionmaking in the most heavily affected circuits during the 1960s and 1970s. Even the work of Judges Johnson and Wisdom is beyond documentation except at book length, because the work of each is massive in product and rich in short-term as well as historical influence, and yet is recorded only in case-by-case citations and the opinions explaining them. In summary, my belief is that without the decisions and the words of these two men, together with those of a few others—Judges Tuttle, Rives, Brown, and Wright notably among them—the implementation of *Brown*'s vision would have failed in the Fifth Circuit and throughout the South. Of course I cannot prove this, but I think the resulting loss to the country would be plain. And I can at least try to illustrate the stunning quality of the judicial acts and words of Judges Wisdom and Johnson by reference to some of the many, many cases each decided.

Judge Wisdom was an appellate judge throughout the period, who had shown himself in private life to be a man of quite extraordinary intelligence, learning, and sense of political history. While in practice, he had been personally responsible for the revival of the Republican Party of Louisiana and for the successful creation of that state's delegation for Eisenhower in the convention of 1952—a brilliant act of political leadership. This delegation, together with one from Georgia (organized, as it happened, by the future Judge Elbert Tuttle) greatly helped the General win the Party's nomination for the Presidency of the United States.

In 1985, Judge Elbert Tuttle, then a senior judge on the Eleventh Circuit, but for many years the forceful Chief of the old Fifth Circuit, wrote a glowing tribute to Judge Wisdom, whom he called "the quintessential appellate judge" and "a paradigm of all the judges with whom I have served."<sup>6</sup> The Tuttle tribute referred, as everyone writing about Judge Wisdom must, to the depth and breadth of the concept of federalism underlying Wisdom's opinions, and the impossibility of characterizing or understanding that output by reference to any single decision.<sup>7</sup> But in the

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6. Elbert Tuttle, *Foreword to In Tribute to John Minor Wisdom*, 60 TUL. L. REV. 231, 231-32 (1985).

7. See *id.* at 233-34.

end, Tuttle singled out, as I do here, the opinion for the court in *United States v. Jefferson County Board of Education*<sup>8</sup> “as the product of genius.”<sup>9</sup> It is important to remember that the *Jefferson County* decision appeared many months before the Supreme Court itself rejected the “freedom of choice” principle of *Briggs v. Elliot*.<sup>10</sup> I am going to let Judge Wisdom speak for himself, and his court:

As we see it, the law imposes an absolute duty to desegregate, that is, disestablish segregation. And an absolute duty to integrate, in the sense that a disproportionate concentration of Negroes in certain schools cannot be ignored; racial mixing of students is a high priority educational goal. The law does not require a maximum of racial mixing or striking a racial balance accurately reflecting the racial composition of the community or the school population. It does not require that each and every child shall attend a racially balanced school. This, we take it, is the sense in which the Civil Rights Commission used the phrase “substantial integration.”

As long as school boards understand the objective of desegregation and the necessity for complete disestablishment of segregation by converting the dual system to a nonracial unitary system, the nomenclature is unimportant. The criterion for determining the validity of a provision in a desegregation plan is whether it is reasonably related to the objective. We emphasize, therefore, the governmental objective and the specifics of the conversion process, rather than the imagery evoked by the pejorative “integration.” Decision-making in this important area of the law cannot be made to turn upon a quibble devised over ten years ago by a court that misread *Brown*, misapplied the class action doctrine in the school desegregation cases, and did not foresee the development of the law of equal opportunities.<sup>11</sup>

Judge Wisdom continued:

The only school desegregation plan that meets constitutional standards is one that works. By helping public schools to meet that test, by assisting the courts in their independent evaluation of school desegregation plans, and by accelerating the progress but simplifying the process of desegregation the HEW Guidelines offer new hope to Negro school children long denied their constitutional

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8. 372 F.2d 836 (5th Cir. 1966).

9. Tuttle, *supra* note 6, at 233.

10. 132 F. Supp. 776 (E.D.S.C. 1955); see also *Green v. County Sch. Bd.*, 391 U.S. 430, 442 (1968) (requiring a school board to “fashion steps which promise realistically to convert promptly to a system without a ‘white’ school and a ‘Negro’ school, but just schools”).

11. *Jefferson County Bd. of Educ.*, 372 F.2d at 846 n.5 (5th Cir. 1966).

rights. A national effort, bringing together Congress, the executive, and the judiciary may be able to make meaningful the right of Negro children to equal educational opportunities. The courts acting alone have failed.<sup>12</sup>

The opinion went on to make it clear that the court was not blind to the realities of race in the mid-1960s:

We approach decision-making here with humility. Many intelligent men of good will who have dedicated their lives to public education are deeply concerned for fear that a doctrinaire approach to desegregating schools may lower educational standards or even destroy public schools in some areas. These educators and school administrators, especially in communities where total segregation has been the way of life from cradle to coffin, may fail to understand all of the legal implications of *Brown*, but they understand the grim realities of the problems that complicate their task.

The Court is aware of the gravity of their problems. (1) Some determined opponents of desegregation would scuttle public education rather than send their children to schools with Negro children. These men flee to the suburbs, reinforcing urban neighborhood school patterns. (2) Private schools, aided by state grants, have mushroomed in some states in this circuit. The flight of white children to these new schools and to established private and parochial schools promotes resegregation. (3) Many white teachers prefer not to teach in integrated public schools. They are tempted to seek employment at white private schools or to retire. (4) Many Negro children, for various reasons, prefer to finish school where they started. These are children who will probably have to settle for unskilled occupations. (5) The gap between white and Negro scholastic achievements causes all sorts of difficulties. There is no consolation in the fact that the gap depends on the socioeconomic status of Negroes at least as much as it depends on inferior Negro schools.

No court can have a confident solution for a legal problem so closely interwoven with political, social, and moral threads as the problem of establishing fair, workable standards for undoing de jure school segregation in the South.<sup>13</sup>

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12. *Id.* at 847 (emphasis omitted).

13. *Id.* at 848-49.

Judge Wisdom finally went on to address directly, as Justice Blackmun did later in his *Bakke* opinion,<sup>14</sup> the reasons for, and the legitimacy of, race-conscious action by the school board:

The Constitution is both color blind and color conscious. To avoid conflict with the equal protection clause, a classification that denies a benefit, causes harm, or imposes a burden must not be based on race. In that sense, the Constitution is color blind. But the Constitution is color conscious to prevent discrimination being perpetuated and to undo the effects of past discrimination. The criterion is the relevancy of color to a legitimate governmental purpose. For example, jury venires must represent a cross-section of the community. The jury commissioners therefore must have a conscious awareness of race in extinguishing racial discrimination in jury service. Similarly, in voter registration cases we have used the "freezing principle" to justify enjoining the use of a constitutional statute where, in effect, the statute would perpetuate past racial discrimination against Negroes. It is unrealistic to suppose that the evils of decades of flagrant racial discrimination can be overcome by purging registration rolls of white voters. Unless there is some appropriate way to equalize the present with the past, the injunctive prohibitions even in the most stringent, emphatic, mandatory terms prohibiting discrimination in the future, continues for many years a structure, committing effectual political power to the already registered whites while excluding Negroes from this vital activity of citizenship. . . . If the Constitution were absolutely colorblind, consideration of race in the census and in adoption proceedings would be unconstitutional.

Here race is relevant, because the governmental purpose is to offer Negroes equal educational opportunities. The means to that end, such as disestablishing segregation among students, distributing the better teachers equitably, equalizing facilities, selecting appropriate locations for schools, and avoiding resegregation must necessarily be based on race. School officials have to know the racial composition of their school populations and the racial distribution within the school district. The Courts and HEW cannot measure good faith or progress without taking race into account. When racial imbalance infects a public school system,

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14. *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 407 (1978) (Blackmun, J., concurring in part and dissenting in part) ("In order to get beyond racism, we must first take account of race. There is no other way. And in order to treat some persons equally, we must treat them differently. We cannot—we dare not—let the Equal Protection Clause perpetuate racial supremacy.").

there is simply no way to alleviate it without consideration of race. There is no constitutional right to have an inequality perpetuated.<sup>15</sup>

The history of judicially mandated school admission and management policies focused on race is a long and troubled one, and for many it ends in frustration. But Judge Wisdom was also a leader in the recognition of voting rights and there accomplished extraordinary success—through the force of judicial remedies, at first county by county, then in whole states, as in Wisdom's well-known and widely admired opinion in *United States v. Louisiana*,<sup>16</sup> and finally nationally through the 1965 Voting Rights Act. In *Louisiana*, Wisdom spoke for a three-judge trial court (or at least two-thirds of it; Judge West of the district court in Louisiana dissented) in invalidating a test that required any citizen wishing to register to vote to show his ability to interpret any section of the state's constitution to the satisfaction of the registrar. This test included, for example, as the Wisdom opinion pointed out, technical sections mysterious in their meaning to anyone not specifically trained in Louisiana's most arcane laws, both procedural and substantive, and also basic commands of policy, such as Louisiana's equivalent of the First Amendment religion clauses that have contributed so much bewilderment to academic constitutional scholars. In the opinion, Judge Wisdom started with a lengthy and exquisitely expounded history of the constitutional-interpretation test in Louisiana, including its application, and then went on to state, "We have [now] considered the true reason for the test, how the test was in fact used to accomplish its purpose, and its necessary effect. Now we apply the law."<sup>17</sup> In applying the law, the court also to a degree created it, using the "freezing" doctrine then being urged by the federal Department of Justice in all voting cases:

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15. *Jefferson County Bd. of Educ.*, 372 F.2d at 876-77 (internal citations, quotation marks, alterations, and footnotes omitted).

16. 225 F. Supp. 353 (E.D. La. 1963). The most memorable and often quoted language in the opinion is at the beginning:

A wall stands in Louisiana between registered voters and unregistered, eligible Negro voters. The wall is the State constitutional requirement that an applicant for registration "understand and give a reasonable interpretation of any section" of the Constitutions of Louisiana or of the United States. It is not the only wall of its kind, but since the Supreme Court's demolition of the white primary, the interpretation test has been the highest, best-guarded, most effective barrier to Negro voting in Louisiana.

*Id.* at 355. The metaphor is taken up again shortly:

We hold: this wall, built to bar Negroes from access to the franchise, must come down. The understanding clause or interpretation test is *not* a literacy requirement. It has no rational relation to measuring the ability of an elector to read and write. It is a test of an elector's ability to interpret the Louisiana and United States Constitutions. Considering this law in its historical setting and considering too the actual operation and inescapable effect of the law, it is evident that the test is a sophisticated scheme to disfranchise Negroes. The test is unconstitutional as written and as administered.

*Id.* at 356.

17. *Id.* at 385.



The cessation of prior discriminatory practices cannot justify the imposition of new and onerous requirements, theoretically applicable to all, but practically affecting primarily those who bore the brunt of previous discrimination. An appropriate remedy therefore should undo the results of past discrimination as well as prevent future inequality of treatment. A court of equity is not powerless to eradicate the effects of former discrimination. If it were, the State could seal into permanent existence the injustices of the past.<sup>18</sup>

Judge Wisdom was also a master of statutory interpretation, fitting ambiguous language and case problems into the overall scheme of the legislation. He did this in the case of the seniority clause of Title VII of the Civil Rights Act, which he called “one of the most perplexing issues troubling the courts”<sup>19</sup> under that Title. The case involved a challenge under Title VII of the Civil Rights Act to the seniority system maintained by the Crown paper mill in Bogalusa, Louisiana. He noted that although the paper mill’s policy of awarding promotions based on seniority was racially neutral, it effectively carried forward the company’s prior maintenance of a segregated system of job opportunities:

The translation of racial status to job-seniority status cannot obscure the hard, cold fact that Negroes at Crown’s mill will lose promotions which, *but for* their race, they would surely have won. Every time a Negro worker hired under the old segregated system bids against a white worker in his job slot, the old racial classification reasserts itself, and the Negro suffers anew for his employer’s previous bias. It is not decisive therefore that a seniority system may appear to be neutral on its face if the inevitable effect of tying the system to the *past* is to cut into the employees *present* right not to be discriminated against on the ground of race.<sup>20</sup>

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Judge Frank Johnson, on the other hand, was the quintessential trial judge. Ultimately, he ended up on the appellate court of the Fifth Circuit, after considering and rejecting possible appointments as Deputy Attorney General under Griffin Bell and Director of the Federal Bureau of Investigation. But his major judicial work—that at which he excelled perhaps beyond every federal judge then, or maybe ever, sitting—was on the trial bench. He had served, with great success, as United States Attorney

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18. *Id.* at 393.

19. *Local 189, United Papermakers v. United States*, 416 F.2d 980, 982 (5th Cir. 1969).

20. *Id.* at 988.

in Birmingham, and entered judicial service in Montgomery in 1955 with a reputation already sufficient to terrify ill-prepared counselors and unrepentant defendants. His imposing physical presence has often been described. I met the Judge many times, but almost never in court, nor over the many proceedings conducted for the United States by John Doar and other top trial lawyers in the division I headed.<sup>21</sup> Still, I would have melted had the Judge's ice-blue eyes focused on me over his half-glasses in anger. There is a well-known story that a fairly new, but not completely neophyte, government attorney was sent in to appear before the Judge, took one look at Judge Johnson's blue eyes, and fainted.

"Judge," as he was known, was in any event greatly admired, indeed loved, by his many clerks and longtime fishing and hunting friends. He was "country" as a matter of identification, and tried endlessly to persuade new clerks, other new acquaintances, and fellow judges to chew tobacco. And he was a funny man, fond of practical jokes.

These attributes were not part of his courtroom technique, however. There was probably no other trial judge who would have been capable of dealing with the situation that developed at the Selma bridge in Alabama in the spring of 1965. It would take many pages to detail the crisis that ultimately emerged, in which the President of the United States, the Governor of Alabama, state and local law-enforcement groups, other state officials, the national media armed with television cameras, and the most prominent leaders of the civil rights movement were deeply at cross-purposes. This hodge-podge of forces was brought into Judge Johnson's court by some civil rights leaders seeking protection and authorization to march down the public highway (the main and only route for easy motor transportation) from Selma to Montgomery, in order to petition Governor George Wallace, of all people, for redress. The United States intervened, as was its wont, and in accordance with the Judge's wishes. In a previous instance, at the time of the Freedom Rides in May 1961, the Judge had temporarily enjoined the Montgomery police from refusing protection to persons in interstate travel, but at the same time enjoined (on his motion) some civil rights groups in the litigation from continuing their rides for the sole purpose of testing and demonstrating.<sup>22</sup> That matter soon became moot, but it remained evidence of Judge Johnson's independence. With regard to Selma, he viewed the situations differently and issued a stunningly contrary constitutional ruling, as follows:

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21. [The author served as Assistant United States Attorney General for Civil Rights from 1961-1965.—Ed.]

22. See *United States v. U.S. Klans, Knights of the Ku Klux Klan, Inc.*, 194 F. Supp. 897, 907 (M.D. Ala. 1961).

This Court has the duty and responsibility in this case of drawing the “constitutional boundary line.” In doing so, it seems basic to our constitutional principles that the extent of the right to assemble, demonstrate and march peaceably along the highways and streets in an orderly manner should be commensurate with the enormity of the wrongs that are being protested and petitioned against. In this case, the wrongs are enormous. The extent of the right to demonstrate against these wrongs should be determined accordingly. This is true even though it is recognized that the right to exercise constitutional rights by marching alongside a public highway must be narrowed in the sense that such a right is subject to greater regulation and in the sense that greater abridgement of the right may, depending upon the circumstances, be warranted. . . . The proclamation as issued by the Governor of the State of Alabama on March 6, 1965, absolutely banning any march by any manner—regardless of how conducted—and stating that such a march will not be tolerated, constituted an unreasonable interference with the right of Negro citizens engaged in the march to use U.S. Highway 80 in the manner they were seeking to use it on Sunday, March 7, 1965. Such a proclamation by the Governor of the State of Alabama, as enforced by the Alabama State Troopers and deputies and “possemen” of Dallas County, Alabama, stepped across the “constitutional boundary line” that lies between the interests of the public to use the highway in general and the right of American citizens to use it for the purpose of marching to the seat of their State government—Montgomery, Alabama—for the purpose of protesting their grievances.<sup>23</sup>

I cannot overstate, for those who do not remember, the immediate consequences of this ruling. The Alabama Governor and his state troopers were called, in effect, into public service, as were the resources of the President of the United States. All this was on the say-so of a single trial judge, daring those swept into the jurisdiction of his court to refuse compliance. It was done on the petition of a civil rights group that had been subjected to constant harassment and had received violent retribution from state and local law-enforcement officials—retribution reflecting, I have no doubt, the will and opinion of their white constituents. The matter ended, of course, with President Lyndon Johnson’s submission to Congress of what became the Voting Rights Act of 1965.

With respect to an expected counterclaim to prohibit demonstrations, the Judge said the following:

It is not alleged by the defendant Governor in the petition for stay as now presented that this Court’s order of March 17, 1965, is

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23. *Williams v. Wallace*, 240 F. Supp. 100, 106-07 (M.D. Ala. 1965) (footnote omitted).

contrary to the law; it is not alleged by the petition that the findings of fact are not supported by the evidence; no claim is made that these findings or conclusions are clearly erroneous. The only basis for the petition to stay is that if the order is not stayed there is danger of violence on the part of white citizens in opposition to the proposed march. Such a contention will not justify the stay of an otherwise uncontested court order.

During the hearing held in this cause that lasted for a period of four and one-half days, the defendant Governor and the other defendants had a full opportunity to offer any evidence they desired for the purpose of showing any undue burden that might be placed upon the State enforcement agencies of Alabama, or the costs that would be imposed upon the State of Alabama if this Court allowed the relief the plaintiffs sought. The defendants failed to offer any such evidence. This is true even after the defendants had a detailed copy of the plan as proposed by the plaintiffs.

This matter as now presented is not a question of the State of Alabama not having the resources and manpower to keep down disorder and violence since the United States stands ready and willing, if requested by the Governor of the State of Alabama, to assist in this regard. The only question that is now presented is whether the State of Alabama authorities are willing to employ their available resources and utilize the additional available resources of the United States Government to preserve peace and order in their compliance with this Court's order.<sup>24</sup>

The last time I visited Judge Frank Johnson was at his home in Montgomery around three years ago. He was ailing, but cheerful and energetic. When I left I was given a book by Mrs. Johnson, entitled *Judge Frank Johnson, Antics & Anecdotes*. To the extent that it was published, it was through some kind of copying machine, in 1985, without the technology one would wish for. Its contents are short tales and recollections of the Judge in various contexts, over the years, written by former colleagues and clerks who had worked and spent recreational time with the Judge. In about 150 pages, the book tells of the wit and the fun of the Judge in his private life, a description that is altogether moving, viewed against the solemn backdrop of his professional life, and the drama and tension and fight for justice in a place where there had been none. He was a man to know and spend time with, enjoyably, as well as a great judge.

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24. *Id.* at 111 (internal citations omitted).